

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: NATIONAL HOCKEY LEAGUE)	
PLAYERS' CONCUSSION INJURY)	MDL No. 14-2551 (SRN/JSM)
LITIGATION)	
)	
_____)	
This Document Relates to:)	
)	
<i>Carcillo v. NHL, et al.,</i>)	
Case No. 0:18-cv-01715 (SRN/BRT))	
)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
NATIONAL HOCKEY LEAGUE AND PLAINTIFFS' JOINT MOTION
TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF ILLINOIS**

Pursuant to 28 U.S.C. § 1404(a), defendant National Hockey League (the “NHL”) and plaintiffs Daniel Carcillo and Nicholas Boynton respectfully submit this memorandum of law in support of their joint motion to transfer this action to the U.S. District Court for the Northern District of Illinois.¹

ARGUMENT

Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer a civil action . . . to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a); *see also Terra Int’l, Inc. v. Miss. Chem. Corp.*, 119 F.3d 688, 696 (8th Cir. 1997) (explaining that the analysis under 28 U.S.C. § 1404(a) is case specific, and there is no exhaustive list of factors that must be considered). When conducting the transfer analysis, courts consider the location of the parties, the location of the relevant conduct and the location of party and non-party witnesses. *See, e.g., Guiette v. U.S. Bank Nat’l Ass’n*, No. 17-1859 (DWF/DTS), 2017

¹ Plaintiffs’ action was not transferred to this Court by the MDL Panel pursuant to 28 U.S.C. § 1407. Instead, it was filed directly in this Court and consolidated with the MDL-transferred cases pursuant to Pretrial Order 1, and the parties and the Court agreed that the NHL reserved all defenses as to jurisdiction and venue. (*See* Pretrial Order No. 1 at 3, *In re Nat’l Hockey League Players’ Concussion Injury Litig.*, MDL No. 14-2551 (SRN/BRT) (D. Minn.), ECF No. 2, Sept. 14, 2014 (allowing cases directly filed in this Court to be consolidated into the MDL); Stipulation as to Service, *Carcillo v. NHL*, No. 18-cv-01715 (D. Minn.), ECF No. 7, Dec. 11, 2018.) Thus, this action should be transferred to an appropriate venue pursuant to 28 U.S.C. § 1404(a), and should not go through the Judicial Panel on Multidistrict Litigation’s remand process. *See In re Vioxx Prods. Liab. Litig.*, 478 F. Supp. 2d 897, 903-04 (E.D. La. 2007) (pretrial order allowed directly filed cases to be consolidated into the MDL and provided for those actions to be transferred under 28 U.S.C. § 1404(a) once the relevant pretrial proceedings concluded). Indeed, since the action was originally filed in this forum, there is no transferor district to which the case could be remanded.

WL 6001738, at *3 (D. Minn. Dec. 4, 2017); *KGM Contractors, Inc. v. Heavy Haulers, Inc.*, 16-CV-3638 (JNE/LIB), 2017 WL 2437239, at *2 (D. Minn. June 5, 2017). In addition, the parties' agreement to transfer to a particular forum weighs in favor of granting transfer to that forum. *See Maryland Cas. Co. v. Shayatovich*, No. 12-01625 (AGF), 2012 WL 5906717, at *2 (E.D. Mo. Nov. 26, 2012) (granting joint transfer motion when the parties agreed to transfer, and other relevant factors supported transfer).

Here, the applicable factors demonstrate that this action should be transferred to the Northern District of Illinois. **First**, because Carcillo resides in Chicago (Compl. ¶ 9), the Northern District of Illinois is a more convenient forum for him than Minnesota. While Boynton resides in Arizona (*id.* ¶ 14), and the NHL is headquartered in New York (*id.* ¶ 19), all parties agree that transfer to the Northern District of Illinois will be more convenient for them, which supports transfer under these circumstances. *See Maryland Cas. Co.*, 2012 WL 5906717, at *1.

Second, the Northern District of Illinois is more closely connected than Minnesota to the operative events in this case because both Carcillo and Boynton played multiple seasons for the Chicago Blackhawks. (*See* Compl. ¶¶ 10, 15.) As a result, crucial facts related to treatment that Carcillo and Boynton received for any alleged head injury—and information that they were provided before or after any such alleged injury—likely will be in the possession of the Blackhawks.

Third, the Northern District of Illinois is considerably more convenient for likely witnesses. Convenience of witnesses—especially non-party witnesses—is often viewed as the single most important factor in the transfer analysis. *See CSI Tech., Inc. v.*

Commtest Instruments Ltd., No. 08-450 (RHK/JJK), 2008 WL 4057546, at *5 (D. Minn. Aug. 26, 2008); *see also KGM Contractors*, 2017 WL 2437239, at *4 (“The convenience of the witnesses is an important factor because ‘it determines the relative ease of access to sources of proof. . . .’” (citation omitted)). Here, non-party witnesses associated with both plaintiffs’ claims, such as team personnel, likely will be located in the Northern District of Illinois.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court transfer this action to the Northern District of Illinois.

Dated: June 28, 2019

Respectfully submitted,

s/Daniel J. Connolly

Daniel J. Connolly (#197427)
Joseph M. Price (#88201)
Linda S. Svitak (#178500)
Aaron D. Van Oort (#315539)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 766-7000

John H. Beisner

Jessica D. Miller

**SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP**
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7000

Shepard Goldfein

Matthew M. Martino

**SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP**
Four Times Square
New York, New York 10036-6522
Telephone: (212) 735-3000

Joseph Baumgarten

Adam M. Lupion

PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299
Telephone: (212) 969-3000

***ATTORNEYS FOR
DEFENDANT NATIONAL HOCKEY LEAGUE***

s/William T. Gibbs

Thomas A. Demetrio (ARDC No. 611506)
William T. Gibbs (ARDC No. 6282949)
CORBOY & DEMETRIO, P.C.
33 N. Dearborn St., 21st Floor
Chicago, IL 60602
Telephone: (312) 346-3191

***ATTORNEYS FOR PLAINTIFFS DANIEL
CARCILLO AND NICHOLAS BOYNTON***